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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 527

UNITED STATES OF AMERICA, PETITIONER

v.

STANLEY KLINGER, WILLIAM CANTOR, AND MORRIS SANDLER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 16-21) is reported at 199 F. 2d 645.

JURISDICTION

The judgment of the Court of Appeals was entered on November 3, 1952 (R. 21). On November 28, 1952, by order of Mr. Justice Jackson, the time within which to file the petition for a writ of certiorari was extended to and including January 2, 1953. The petition was filed on December 31, 1952, and was granted on April 6, 1953 (R. 25). The jurisdiction of this Court is invoked under 28 U. S. C.

1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether, under the amended Wartime Suspension of Limitations Act, which suspended the "running" of any statute of limitations applicable to offenses involving fraud against the United States "until three years after the termination of hostilities", the applicable period of limitations began to run the day after the official termination of hostilities (December 31, 1946) or three years thereafter (December 31, 1949).

STATUTE INVOLVED

Section 1 of the Suspension Act of August 24, 1942, as amended by Section 28 of the Surplus Property Act of October 3, 1944 (c. 479, 58 Stat. 765, 781; 18 U. S. C. (1946 ed.) 590a), provided in pertinent part:

> The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, * * * shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. * * *[1]

[1] This provision, with changes in phraseology not here significant, was codified in the revision of the Criminal Code as 18 U.S.C. (Supp. V) 3287. The Reviser's Notes indicate that the sole purpose was to make permanent the otherwise temporary suspension provision. See *United States* v. *Smith*, 342 U.S. 225, 226 n. 1.

STATEMENT

On March 31, 1950, respondents were indicted for conspiracy in 1946 to defraud the United States of the services of its employees in the control of sugar rationing (R. 2-8). The indictment alleged that petitioners Klinger and Cantor were investigators in the Food Section of the Enforcement Division of the Office of Price Administration at New York City, and that various co-conspirators were persons engaged in the food business who maintained sugar ration bank accounts at various banks.[2] The scheme described in the indictment was to have the co-conspirators, at the direction of the defendants,[3] set up sugar ration accounts, overdraw their allotment, and sell the sugar thus obtained on the black market, at prices far in excess of the maximum ceiling prices. In pursuance of the conspiracy, the defendants, who were employees of O.P.A., would merely recommend suspension of the co-conspirators from further dealings in sugar and would not refer their cases for criminal prosecution. The conspiracy was alleged to have begun about January 1, 1946, and the overt acts charged did not extend beyond December 1946.

The trial court denied motions to dismiss which were based on the ground that the prosecution was

[2] Above the consumer level, the sugar ration system was operated in a manner similar to a bank check account. Retailers or wholesalers were given an allotment for a certain amount of sugar which was filed in a bank as a deposit. When sugar was purchased, a ration check for the amount purchased, drawn on the bank where the allotment was filed, was given to a supplier and eventually debited from the buyer's account. If accounts were overdrawn, the bank would notify the Office of Price Administration of the overdraw.

[3] Petitioner Sandler, who was named in a number of the overt acts (R. 6-8) was shown at the trial to have been the principal supplier of sugar.

barred by the statute of limitations (R. 9). Respondents were found guilty after trial and were each sentenced to imprisonment for two years (R. 9-10).

The Court of Appeals for the Second Circuit reversed (R. 21), holding that the prosecution was barred by the three year statute of limitations applicable to such crimes. It interpreted the language of the 1944 Suspension of Limitations Act (*supra*, p. 2)—* * * "the running of any existing statute of limitations * * * shall be suspended until three years after the termination of hostilities * * *"[4]—as lifting the *bar* of the applicable three year statute of limitations until December 31, 1949. As to all crimes subject to a three year statute of limitations and comprehended by the Suspension Act, the court held that the bar of the statute fell on December 31, 1949. The instant prosecutions which were begun after that date were, therefore, ordered dismissed.

The court recognized that the original 1942 Suspension Act, the immediate predecessor of the 1944 Act, containing precisely the same words—"the running of any existing statute of limitations * * * shall be suspended * * *"—was properly interpreted in its literal sense, *i.e.*, that the "running" of the limitations statute was suspended and could not mean that the "bar" of the statute was lifted for the period described by that Act (R. 17-18). It also conceded that the literal language of the 1944 Act meant that the period of suspension lasted until

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[4] Hostilities in World War II were officially declared terminated by Presidential Proclamation 2714 on December 31, 1946. 12 F.R. 1.

December 31, 1949, at which time the limitations period began to run, and, accordingly, the terminal date for prosecutions was December 31, 1952 (R. 17). Nevertheless, because of the court's view of policy considerations, and because of its reading of the opinions of this Court in *United States* v. *Smith*, 342 U. S. 225, it refused to accord to the 1944 Act its literal interpretation, but read the word "running" in that Act to read "bar."

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the instant indictment was barred by the three-year period of limitations.

2. In holding that, under the Wartime Suspension of Limitations Act, providing that, as to certain crimes, "the running of any existing statute of limitations * * * shall be suspended until three years after the termination of hostilities", the period of limitations, as to an offense completed by the time of the termination of hostilities on December 31, 1946, began to run the day after cessation of hostilities, instead of three years later.

3. In interpreting the word "running" in the Wartime Suspension Act as meaning that the bar of the statute of limitations was suspended until three years after hostilities.

SUMMARY OF ARGUMENT

I

1. The Suspension Act provides in terms that "the running of any existing statute of limitations" applicable to certain crimes "shall be suspended until three years after the termination of

hostilities in the present war." It is conceded by the court below that, literally read, this means that the time from the first enactment of the statute, *i.e.*, August 24, 1942, until three years after the termination of hostilities, *i.e.* December 31, 1949, was not to be counted as time when the period of limitations was operative, with the result that the instant prosecution was not barred until December 31, 1952. The court below, however, read the word "running" as meaning that the "bar" of the statute of limitations was suspended until three years after hostilities, with the result that as to all prosecutions for which the normal period of limitations would have expired between August 24, 1942 and December 31, 1949, the terminal date for prosecution was December 31, 1949.

There is no justification for refusing to apply the literal language. "The running of the statute of limitations" is a legal phrase consistently used to mean "that the time mentioned in the statute of limitations is considered as passing." Bouvier, *Law Dictionary,* Rawle's 3rd Revision, Vol. 2. More particularly, the sentence "the running of the statute is suspended" or its equivalent has consistently been used by the courts in accord with the obvious and literal meaning of counting out from the period of limitations the period of suspension. *E.g., Hanger* v. *Abbott,* 6 Wall. 532, 542; *United States* v. *Wiley,* 11 Wall. 508, 513; *Braun* v. *Sauerwein,* 10 Wall. 218, 223. A sentence so consistently used in accord with its literal meaning should not now be given a different construction.

2. There are affirmative indications that, in the statute here involved, Congress used the words in their classic sense. As originally enacted in 1942,

the Wartime Suspension Act read: "* * * the running of any existing statute of limitations * * * shall be suspended until June 30, 1945." It is conceded by the court below that in this 1942 statute, Congress used the words the "running of any existing statute of limitations * * * shall be suspended" in their literal sense. To have construed "running" as meaning "bar" in the 1942 Act would have rendered it largely meaningless as to wartime crimes, since the normal three-year period of limitations as to crimes committed after August 24, 1942 would extend beyond June 30, 1945.

The 1944 Act here involved, which amended the 1942 act, used exactly the same words; it merely substituted for the fixed date of June 30, 1945, the date "three years after the termination of hostilities." There is thus no warrant for the conclusion of the court below that in the amending act of October 3, 1944, the word "running" somehow took on an esoteric meaning different from the sense in which it had been used in the statute being amended.

The substitution of the phrase "three years after the termination of hostilities" for the fixed date of June 30, 1945, was first made by the Contract Settlement Act of July 1, 1944. The manager of that act in the House of Representatives explained the provision as meaning that the statute of limitations "ceases to run from the date the bill becomes effective until 3 years after the war; then it runs on until completion." 1190 Cong. Rec. 6059-6060. This explanation of what is essentially the same legislation as that here involved clearly rebuts the holding of the court below.

3. The holding of this Court in *United States* v. *Smith*, 342 U. S. 225, to the effect that the Suspen-

sion Act does not apply to offenses committed after the termination of hostilities does not, as the court below seems to have thought, support the decision below. This Court, in the *Smith* case, was not called upon to decide the question of the effect of the Act on crimes committed during hostilities. The determination that the Act applied only to wartime crimes does not mean that, as to such wartime crimes, a period after the war cannot be counted out of the period of limitations.

Fundamentally, the opinion below rests on the court's disapproval of the results which flow from the normal, literal construction of the statute. Had the statute suspended the running of the statute of limitations until six months after the termination of hostilities, the court below would probably not have felt constrained to read the statute in any but its classic sense. We submit that there is no justification for adopting a distorted construction of plain words merely because the time period fixed by Congress does not seem to the court a wise one.

ARGUMENT

The Wartime Suspension Act Suspended the Running of the Applicable Statute of Limitations and the Court Below Erred in Holding That the Bar of the Statute Had Fallen Prior to the Instant Prosecutions.

A. *The express terms of the Suspension Act define the period during which limitation periods applicable to certain categories of crimes are to be held in abeyance.*

The Suspension Act provides in terms that "the running of any existing statute of limitations" applicable to certain crimes "shall be suspended until three years after the termination of hostili-

ties in the present war * * *." This language on its face creates a period during which the "running" of limitation statutes are to be held suspended, *i. e.*, held in abeyance, and at the termination of which they will commence to run again. The beginning of that period of suspension is August 24, 1942, when the Act was originally passed, and the terminal date is "three years after the termination of hostilities in the present war", *i. e.*, December 31, 1949. Thus, until December 31, 1949, there was no statute of limitations for the applicable crimes, but on January 1, 1950, all limitations periods began to run their normal course. As to crimes committed after August 24, 1942, subject to the normal three year limitation period established by 18 U. S. C. (1946 ed.) 582,[5] the period of limitations expired December 31, 1952. As to crimes committed before August 24, 1942, and against which the limitation provision had already partially run before the suspension period commenced, only so much of the limitation period as was left would run after December 31, 1949.

This simple and obvious construction wholly accords with the words used by Congress. The decision below admits that this is the construction which must follow from a literal reading of the words used. Nevertheless, the court below read the word "running" to mean "bar" and held that the statute meant that the "bar" of any existing statute of limitations was suspended until three years after the period of hostilities. The result followed that as to all prosecutions for which the normal period

[5] In 1948, Section 582 was incorporated in the Revised Code as 18 U.S.C. 3282.

of limitations would have expired at any time between August 24, 1942, and December 31, 1949, the terminal date for prosecution was December 31, 1949.

As a means of escaping from the unequivocal language of the statute, the court below stated that "running" is a "colloquial term" and not a "word of art." (R. 17.) Even assuming that this were so, the most reasonable interpretation to give to a "colloquial term" is to use the word in its ordinary sense. And certainly, in common terminology, in relation to time, "running" means the passing of time and not the "bar" of the passage of time.

Actually, however, the phrase "running of the statute of limitations" is not so "colloquial" as it is a traditional legal phrase of certain meaning. It is defined in the law dictionaries as "a metaphorical expression, by which is meant that the time mentioned in the statute of limitations is considered as passing." Bouvier, *Law Dictionary*, Rawle's 3rd Revision, Vol. 2; Black, *Law Dictionary* (3rd ed.) p. 1572. It is used by lawyers and judges frequently and always with the same meaning. In determining when periods of limitations start, this Court has consistently from the time of Chief Justice Marshall spoken of the time when the statute has commenced "to run." *E. g., Bond* v. *Jay*, 7 Cranch 350, 354 ("the statute has never commenced to run"); *Cope* v. *Anderson* 331 U. S. 461, 464 ("the question of when the applicable state statute of limitations begins to run"). In fact, the phrase is so automatic a part of the lawyer's vocabulary that the opinion below, although holding that the term "running" means "bar," states that the

result of this case "depends upon whether the three year period of limitation * * * *began to run* on January 1, 1947, or on January 1, 1950" (italics added) (R. 16-17).

More particularly, the sentence, "the running of the statute is suspended" or its equivalent has a long history of use, always in accord with the obvious and literal meaning of counting out or tolling from the period of limitations the period of suspension. In answer to a contention that a statute of limitations continued to run despite the fact that the courts were closed during the Civil War this Court stated: "* * * Peace restores the right and the remedy, and as that cannot be if the limitation *continues to run* during the period the creditor is rendered incapable to sue, it necessarily follows that the operation of the statute is also *suspended* during the same period." (Italics supplied.) *Hanger* v. *Abbott*, 6 Wall. 532, 542. In *United States* v. *Wiley*, 11 Wall. 508, 513, this Court said of *Hanger* v. *Abbott*:

> "* * * it was decided that the effect of the war was to suspend the running of statutes of limitation during its continuance."[6]

Nor has this phraseology been confined to suspen-

[6] See also *Brown* v. *Hiatts*, 15 Wall. 177, where this Court, in addressing itself to the effect that a period of war had on the running of the statute of limitations, said (pp. 183-184):

"* * * And so far as the operation of the statute of limitations is concerned, it was held in the same case that the war continued until proclamation was in like manner officially made of its close. That occurred on the 2d day of April, 1866. The period, therefore, between the 27th day of April, 1861, and the 2d of April, 1866, must be excluded in the computation of the time during which the statute has run against the right of action of the complainant on the bond and mortgage in suit, and being excluded the present suit is not barred."

sion during war. In *Braun* v. *Sauerwein*, 10 Wall. 218, a federal statute was assumed to have taken out of a state statute of limitations the period during which an appeal was pending before the Commissioner of Internal Revenue. In referring to this statute, this Court said (p. 223):

> It seems, therefore, to be established, that the *running of a statute of limitation may be suspended by* causes not mentioned in the statute itself. Assuming, then, that the act of Congress did, for a time, *stop the running of the Maryland statute* against the plaintiff, the inquiry remains, how long did the suspension continue? [Italics supplied.]

See also *Tyson* v. *United States*, 76 F. 2d 533, where the Court of Appeals for the Fourth Circuit said (p. 535):

> The suspension of a statute of limitations for a certain period is, in effect, "time taken out," for that period and adds the same period of time to the limitations provided in the statute.

Cf. *Salvoni* v. *Pilson*, 181 F. 2d 615 (C.A. D.C.), certiorari denied, 339 U.S. 981; *United States* v. *Gower*, 71 F. 2d 366, 369 (C.A. 10).[7]

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[7] See also *United States* v. *Markowitz*, 34 F. Supp. 827 (N.D. Cal.). District Judge Welsh, addressing himself to an argument similar to the position taken by the Court below, said (p. 829):

"If the term 'suspension of the running of the statutory period of limitations' were synonymous with the term 'suspension of the expiration date of the statutory period of limitations', there would be merit to defendant's contention that this action was barred on December 31, 1938. But the running of a period of time is not generally understood to refer

In sum, judicial interpretations of the phrase "suspension of the running of the statute of limitations" have been uncommonly uniform, and, significantly, the court below cited no authority for its contrary position. In view of the traditional and consistent meaning of the phrase, the distortion of the word "running" to mean "bar" by the court below is completely unwarranted.

B. *The history of the Wartime Suspension Act shows that Congress intended to extend the period of suspension until three years after hostilities had terminated, at which time the limitations period which had been arrested during that period would commence to run again.*

As originally enacted in 1942, the Wartime Suspension Act read "* * * the running of any existing statute of limitations * * * shall be suspended until June 30, 1945 * * *".[8]

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to the expiration point of that period. In Bouvier's Law Dictionary, Rawle's 3d Revision, Vol. 2, the term 'running of the statute of limitations' is defined as, 'a metaphorical expression by which is meant that the time mentioned in the Statute of Limitation is considered as passing.' * * * When the running of the statutory period of limitations is suspended, the limitation period is arrested; it is prevented from running any further during the time of the suspension, and when the time of suspension is over, the statutory period of limitations commences to run again."

The proposition that the Wartime Suspension of Limitations Act suspended the statute of limitations until December 31, 1949, when it then began to run, was assumed by the Court of Appeals for the Ninth Circuit in *Danebo Lumber Co.* v. *Koutsky-Brennan-Vana Co.*, 182 F. 2d 489, 491, and in *Furrow* v. *Koutsky-Brennan-Vana Co.*, 182 F. 2d 496, 499-500. *United States* v. *Showalter*, 103 F. Supp. 806 (N.D. Cal.), is a district court holding contrary to that of the court below.

[8] H.R. 6484, which became the 1942 Suspension of Limitations Act, provided "that the running of any existing statute of limitations applicable to offenses involving the defrauding

The opinion below concedes that, in the 1942 statute, the words "running of any existing statute of limitations * * * shall be suspended" were used in the literal sense (R. 17-18). The Senate report on the bill (S. Rep. No. 1544, 77th Cong., 2nd Sess.) states that action should be taken "to insure that the limitations statute will not operate, under stress of the present-day events." To have construed "running" as meaning "bar" in that Act would have rendered the Act largely meaningless as to wartime crimes. For the normal three year period of limitations as to crimes committed after August 24, 1942, would extend beyond June 30, 1945. Thus, without question, the 1942 Act meant that the pe-

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or attempts to defraud the United States * * * shall be suspended for the period of the present war and for 6 months thereafter." The Senate substituted the fixed dates, or "such earlier time" as Congress or the President may designate.

Contemporaneously with the enactment of the Act of August 24, 1942, the Act of October 10, 1942, 56 Stat. 781, was enacted. This Act provided that "the running of any existing statute of limitations applicable to violations of the antitrust laws of the United States * * * shall be suspended until June 30, 1945 * * *." This legislation was explained in a Senate Report of the Committee on the Judiciary as follows (S. Rep. 1592, 77th Cong., 2d Sess.):

> This committee had previously reported favorably the bill (H.R. 6484), to suspend the running of the statute of limitations applicable to frauds against the United States, which bill has been enacted into law, approved by the President and is Public Law No. 706. This bill (S. 2731) will accomplish the same purpose as to violations of the antitrust laws, both civil and criminal.
>
> Specifically it suspends the statute of limitations applicable to violation of the antitrust laws of the United States until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate. The date is selected because it is 6 months after December 31, 1944, which has been used by the Congress as the estimated date of the termination of the war and it is felt that the suspension should continue 6 months after the termination of the war.

riod from August 24, 1942, to June 30, 1945, was not to be counted as time when the statute of limitations was running.

The 1944 Act contains precisely the same words of import as does the 1942 Act: "the running of any existing statute of limitations * * * shall be suspended." The only change is that instead of the fixed terminal date in the 1942 Act, June 30, 1945, the date in the 1944 Act is "three years after the termination of hostilities." There is absolutely no basis for the conclusion of the court below that, in the amending Act of October 3, 1944, in the 1944 statute, the word "running" somehow took on an esoteric meaning different from the obvious and previous one it had in the statute being amended.

There is not only no indication of any intent on the part of Congress to change the meaning of the word, but there is substantially contemporaneous expression of an intent that the word "running" was to be used in exactly the same classic sense that it had been in the 1942 statute. The first amendment to the Suspension Act of 1942 was by Section 19(b) of the Contract Settlement Act of July 1, 1944, c. 353, 58 Stat. 649, 667.[9] Representative

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[9] Section 19(b) provided: "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the present war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President

Gwynne, a manager of the Contract Settlement Act in the House of Representatives, explained its suspension provision as follows (90 Cong. Rec. 6059-6060):

> In this bill we have some very drastic penalties for fraud. Let me call your attention to them. In the first place, the running of the statute of limitations is suspended for 3 years after the war. That is, it ceases to run from the date the bill becomes effective until 3 years after the war; then it runs on until completion.

This explanation of the operation of what is, for present purposes, essentially the same legislation with which we are here concerned, clearly refutes the holding of the court below.

The Wartime Suspension of Limitations Act was again amended by Section 28 of the Surplus Property Act of October 3, 1944, c. 479, 58 Stat. 765, 781, *supra*, p. 2. In its report on the bill (S. 2065) which became the Surplus Property Act, the Senate Committee on Military Affairs said (S. Rep. 1057, 78th Cong., 2d Sess., p. 14):

> As was provided in the Contract Settlement Act of 1944, the statute of limitations with respect to offense against the laws of the United States arising in connection with activities under this act was suspended until 3 years after termination of hostilities in the present war. This provision has been necessitated by

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or by a concurrent resolution of the two Houses of Congress. This section shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by provisions of existing law."

> the magnitude of the operations involved under this act, and the intensive preoccupation of both participants and witnesses with the war effort. It is clear that the bulk of the offenses cognizable under this statute will not be apprehended or investigated until the end of the war and will then require considerable time before they advance to the stage of litigation.

The opinion below states (R. 20) that the last sentence of the above paragraph is an equivocal way of saying that the bar of limitations should not fall for some period after the termination of hostilities. To the contrary, however, it clearly points more in the direction of the literal reading of the statute than of the forced construction of the court below. In the light of the fact that the Amendment was merely extending a previous Act, the purport of which was admittedly clear, and in the light of the fact that the meaning of precisely similar words had been clearly explained a short time before, the sentence certainly furnishes no basis for departing from the plain meaning of the words used.

Indeed, the very labelling of this statute as a "Suspension Act" rebuts the tenuous rationale of the court below. There is an obvious difference between suspension acts which create *periods of suspension, i. e.,* periods when no time limitation can run against the crimes to which it is applicable, and statutes of limitation which create *limitations periods, i. e.,* periods during which time limitations are applicable. A suspension act "does not specify any time within which an action shall be brought," "an essential feature belonging to a statute of limi-

tations," and does not limit the time when the limitation period begins to run and when it is tolled except by implication; it merely creates a period when the time limitation is held in abeyance. *Graydon* v. *Sweet*, 1 Woods 418, Fed. Cas. No. 5,733 (C. C. W. D. Tex.). The Suspension Act did not purport to indicate the date when the statute of limitations would bar prosecutions. Rather, it defined the period during which it would not be operative at all.

At all times when the Wartime Suspension of Limitations Act was under Congressional consideration, a literal interpretation was given its language.[10] This literal interpretation is fully consonant with the legislative purpose. For it is apparent that Congress intended in each instance to postpone the operation of statutes of limitation until a time when the intensive preoccupation of the Government with hostilities and with post-hostilities reconversion would be over, and the Government could apply itself to detection and prosecution of hidden crimes which flourish in a war situation.

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[10] The Suspension Act was incorporated as Article 43(f) of the Act of May 5, 1950, the Uniform Code of Military Justice, 64 Stat. 107, 50 U.S.C., Supp. V, 618(f), which became effective on May 31, 1951. At pp. 1044-1046, Hearings before a Subcommittee of the Committee on Armed Services on H.R. 2498, 81st Cong., 1st Sess., the subcommittee discussion adverted to the fact that 18 U.S.C. 3287 (see *supra*, p. 2) was being incorporated into the Uniform Code and that its effect would be to create a period of suspension subsisting until 3 years after hostilities were officially terminated, at which time the statute of limitations would commence to run against prosecutions of crimes of fraud.

C. *No considerations of policy justify the refusal to apply the clear and plainly intended meaning of the words used by Congress.*

The refusal of the court below to adopt the plain meaning of the literal language of the statute appears to stem from its interpretation of the decision of this Court in *United States* v. *Smith*, 342 U. S. 225. The *Smith* case arose out of prosecutions for crimes committed after the termination of hostilities, *i. e.*, in 1947. This Court held that the Suspension Act did not apply to such offenses and, that, consequently, the three-year statute of limitations for those offenses had not been suspended for *any* period. The dismissal of the indictments was therefore affirmed. It is obvious that the problem with which the Court was faced in *Smith* was whether offenses committed after the termination of hostilities were comprehended by the Suspension Act, and that the Court decided merely that the statute of limitations was not suspended at all for such offenses. That the Court did not decide any question as to the effect of the Act on crimes committed *during* the period of hostilities (as was the crime here involved) is made clear, not only from the opinion of Mr. Justice Douglas, writing for the majority of the Court, but also from the separate concurring opinion of Mr. Justice Clark, who joined in that opinion to make a majority of five. Mr. Justice Clark expressly stated (342 U. S. at 231): "For those offenses which occurred between the date of the 1942 Act and the cessation of hostilities, Congress' intention was to give the Department of Justice six years from the latter

date to investigate and prosecute." The court below, therefore, was manifestly in error when it relied upon the opinion of Mr. Justice Douglas as support for its result in this case.

But even if Mr. Justice Douglas' opinion could be read as did the court below, the uncontrovertible fact is that five members of this Court in *Smith* took a position diametrically opposed to that view. Accordingly, that opinion cannot be deemed controlling here. For the four members of this Court who joined in the dissenting opinion of Mr. Justice Minton expressed the view that Congress intended that until three years after the termination of hostilities, "there was to be no statute of limitations," and that on December 31, 1949, "the suspension was lifted, and the statute began to run again." 342 U. S. at 231. The plain purport of that opinion is that, as to offenses committed during hostilities, the statute did not begin to run until three years after the date of termination. The opinion of Mr. Justice Douglas certainly does not require the result reached by the court below. Contrary to the belief of the court below (R. 18-19), nothing in that opinion, as we have shown, precludes the four dissenting Justices, or Mr. Justice Clark, from adhering to their reading of the statute as to the issue here involved. There is no incongruity in holding that, in the case of a crime committed during hostilities, the three-year limitations period applicable in this case began to run on December 31, 1949, but that for crimes occurring after hostilities had ended, the statute commenced to run on the very date of the crime.

Fundamentally, as the opinion itself makes

clear, the refusal of the court below to follow the plain meaning of the statute stems from its disapproval of the doubling of the statute of limitations which flows from the normal, obvious construction. (R. 18, 20.) Had the statute read "the running of any existing statute of limitations * * * shall be suspended until *six months* after the termination of hostilities" the court below probably would not have felt constrained to read the statute in any but its literal well-established sense. There is no justification for adopting a distorted construction of plain words merely because the time period fixed by Congress does not seem to the court a wise one. By every standard of construction—the literal meaning of the words used, the settled judicial construction of the words used, the sense in which the words were used in the original statute of which the act in question is merely an amendment, the interpretation given to the words by the legislators responsible for the legislation—the words of the statute that "the running of any existing statute of limitations * * * shall be suspended until three years after the termination of hostilities" means that, as to offenses committed during hostilities, the period before December 31, 1949 cannot be counted as a period during which the statute of limitations was running. Hence, the indictment in the instant case was not barred, and the decision below should be reversed."

" This case also involves the question not decided by the court below, as to whether the crime charged, a conspiracy to defraud the United States—in this case of the faithful services of its employees and of the proper functioning of its sugar rationing control—is a crime involving fraud under the Suspension Act. It seems clear that, had the court below passed upon the question, it would have held the crime to be an

CONCLUSION

The judgment below should be reversed and the cause remanded to the Court of Appeals for determination of the issues, other than those relating to the statute of limitations, raised by respondents.

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APRIL 1953

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offense covered by the Suspension Act, since in *Miller* v. *United States*, 24 F. 2d 353, certiorari denied, 276 U.S. 638, the Second Circuit had held that a 1921 proviso, extending the period of limitations as to crimes "involving fraud against the United States", applied to a charge of conspiracy to defraud the United States—in that case of the impartial services of its employees with respect to a claim before the Alien Property Custodian. See also *Falter* v. *United States*, 23 F. 2d 420 (C.A. 2), certiorari denied, 277 U.S. 590. Moreover, in *United States* v. *Gottfried*, 165 F. 2d 360, certiorari denied, 333 U.S. 860, the Court of Appeals for the Second Circuit held that the 1942 Suspension Act applied to the crime of making false statements—in that case to the Office of Price Administration in order to get larger sugar allocations. We discuss the foregoing cases in detail in the brief for the Government in *Bridges* v. *United States*, No. 548, this Term, to which we respectfully refer the Court.

In addition, respondents raised before the Court of Appeals a number of contentions relating to the sufficiency of the evidence and alleged errors at the trial, none of which the court below found necessary to reach. Respondents obtained leave from the court below to proceed *in forma pauperis* on a typewritten record. Since the transcript of all the testimony at the trial was unnecessary to the determination of the issue raised by the Government's petition for a writ of certiorari, that portion of the record was not printed. In these circumstances, we suggest that, if this Court reverses the judgment below insofar as it relates to the statute of limitations, the cause be remanded to the Court of Appeals for determination of the other contentions raised by respondents.

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IN THE

Supreme Court of the United States

October Term, 1952

No. 527

UNITED STATES OF AMERICA,

Petitioner,

—v.—

STANLEY KLINGER, WILLIAM CANTOR, and MORRIS SANDLER,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

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